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MARY E. D'ANDREA, CLERK
Per _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON ERIC BENSON,
Plaintiff

v.

THOMAS DURAN; BRUCE CLUCK;
DEBRA HANKEY; JOHN JENNINGS;
WILLIAM ORTH; RAE HIENTZELMAN;
RONALD LONG and WILLIAM ELLIEN;
BRITON SHELTON; AND ADAMS
COUNTY PRISON
Defendants

CIVIL ACTION

NO. 1:00-CV-01229

Judge Caldwell
Mag. Judge Blewett ✓

JURY TRIAL DEMANDED

**MEMORANDUM OF DEFENDANTS DURAN, CLUCK, HANKEY, JENNINGS, ORTH,
HEINTZELMAN, SHELTON AND ADAMS COUNTY PRISON IN OPPOSITION TO
PLAINTIFF'S MOTION TO PRECLUDE EXPERT TESTIMONY AND FOR SANCTIONS "FOR
BLATANT DISCOVERY VIOLATIONS"**

I. PROCEDURAL HISTORY:

This is a pro se prisoner suit against two doctors, the Adams County Prison and seven past and present members of the prison staff.

On or about November 14, 2001, Mr. Benson prepared and served a Motion to Preclude Expert Testimony and for discovery sanctions. As to the Adams County Prison Defendants, the Motion asserts that the Court should preclude the presentation of any expert testimony and that the Court should enter a monetary sanction in the amount of \$750,000 for what Mr. Benson represents to be shortcomings in the responses of the Adams County Defendants to their discovery obligations. This Brief is in opposition to the Plaintiff's Motion.

II. STATEMENT OF ISSUES PRESENTED:

A. WHETHER IN THE ABSENCE OF ANY EXPERT DISCOVERY DEADLINE OR PREJUDICE TO THE PLAINTIFF, THE ADAMS COUNTY DEFENDANTS SHOULD BE PRECLUDED FROM PRESENTING EXPERT TESTIMONY AT TRIAL?

(Suggested answer: No.)

B. WHETHER THE ADAMS COUNTY DEFENDANTS HAVE IN ANY WAY FAILED TO FULLY DISCHARGE THEIR DISCOVERY OBLIGATIONS IN THIS CASE?

(Suggested answer: No.)

III. ARGUMENT:

A. In the absence of an expert discovery deadline or prejudice to the Plaintiff, the Defendants should not be precluded from presenting expert testimony at trial.

The Plaintiff first seeks to preclude all of the Defendants from presenting expert testimony. The asserted basis for the request is due to the Defendants' "blatant failure" to provide identifying information for expert witnesses and a summary of their anticipated testimony.

In this case, the Court has not imposed a deadline for expert discovery. While it is true that in cases where the Court has not imposed a discovery deadline, discovery for a particular party closes six months after the last pleading filed by that party pursuant to Local Rule of Court 26.4, discovery in this case has continued through mid-October, 2001. The Plaintiff was deposed on August 30, 2001 and as late as October 16, 2001, the Court granted in part and

denied in part a separate discovery motion (dealing with issues not involving the Adams County Prison Defendants) which was filed by the Plaintiff.

Pursuant to F.R.C.P. 26(a)(2), disclosure of information pertaining to expert witnesses must be made at least 90 days prior to trial absent other directions from the Court. In this case, no trial date has yet been set. The Court has, however, imposed a dispositive motion deadline of November 15, 2001. In conjunction with the filing of the Motion for Summary Judgment on behalf of the Adams County Prison Defendants, an expert report with a summary of the expert's qualifications was provided to Plaintiff. A copy of the report and *Curriculum Vitae* for the expert are attached hereto as Exhibit "A".

The Adams County Prison Defendants have not disobeyed any Order of this Court nor have they been untimely under Federal Rule 26 in regard to expert disclosures. Under the circumstances, there is no basis for the Plaintiff's request to preclude the Adams County Defendants from presenting expert testimony at trial and, at this early date, there is no prejudice to the Plaintiff which would justify a preclusion of expert testimony. Accordingly, the Plaintiff's first request for relief should be denied.

B. The Adams County Defendants have not failed to complete their discovery obligations as required by the Federal Rules of Civil Procedure.

The Plaintiff's second point raised with regard to the Adams County Defendants is somewhat vague, but appears to allege that certain "Extraordinary Occurrence Reports" were not produced in response to a discovery request. The particular discovery in question is a set of "Admissions and Request for Production of Documents" bearing a date of May 7, 2001. A copy of this discovery request is attached to Plaintiff's Motion as Exhibit "D."

The Plaintiff's Motion appears to concede that timely objections to the Request for Admissions were made (the Objections are attached as part of Exhibit "D" to the Plaintiff's Motion). The Admissions were the third set of requests for admissions that the Plaintiff had served in the case and were in excess of the total number of requests for admissions which are permitted pursuant to Middle District Rule 36.1. The Plaintiff's Motion does not argue that the Request for Admissions should be answered. Instead, the Plaintiff argues that the Adams County Defendants did not produce certain Extraordinary Occurrence Reports in response to the Plaintiff's Request for Production of Documents which is included with the third set of Admissions.

The Plaintiff fails to note that in response to his first Request for Production of Documents in the case, dated September 25, 2000, and attached hereto as Exhibit "B", the Plaintiff made the following request: "7) All complete Adams County Prison "Extraordinary Occurrence (sic) Reports prepared by everyone involved in the incident of 8/27/99." To this request, the Adams County Defendants served a written response on March 29, 2001. The reply stated: "See Extraordinary Occurrence Reports attached hereto." A copy of the response of Adams County Defendants to Plaintiff's Request for Production of Documents, Certificate of Service and the Extraordinary Occurrence Reports attached thereto are all attached hereto and marked Exhibit "C". So, although it is true that the Adams County Defendants did not produce Extraordinary Occurrence Reports in response to the Plaintiff's May 9, 2001 Admissions and Request for Production of Documents, all of these documents were produced in response to a prior, duplicative discovery request.¹ No information has been withheld from the Plaintiff.

¹ The May 9 Request for Admissions and for Production of Documents seeks Extraordinary Occurrence Reports from Defendants Hankey, Jennings and Shelton. The reports prepared by Jennings, Shelton,

It is clear from the foregoing that the Adams County Defendants have not violated any discovery rule, nor have they failed in any way to comply with their discovery obligations. Accordingly, the Plaintiff's Motion to Preclude Expert Testimony and for Sanctions should be denied.

IV. CONCLUSION:

For the reasons stated above, the Adams County Prison Defendants respectfully request that the Plaintiff's Motion to Preclude Expert Testimony and for Sanctions be denied.

Respectfully submitted,

THOMAS, THOMAS & HAVER, LLP

By: 

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(717) 237-7132

Attorneys for Adams County Defendants

DATE: 11/27/00

Duran, Heintzelman and Cluck were all produced on March 29, 2001. Deputy Warden Hankey's involvement in the August 27, 1999 incident was so minimal that she did not prepare an Extraordinary Occurrence Report.

Report In The Matter Of

Jason E. Benson

vs.

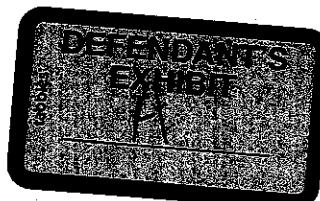
Adams County Prison et al.

No. 1: CV-00-1229

Prepared by:



Ronald H. Traenkle
November 6, 2001



Materials Reviewed

1. Deposition transcript of Jason E. Benson; August 30, 2001
2. Affidavit of Deputy Warden Bruce A. Cluck; dated October 15, 2001
3. Affidavit of Deputy Warden Debra Hankey; dated September 28, 2001
4. Affidavit of Warden Thomas Duran; dated September 27, 2001
5. Affidavit of Sergeant Ray Heintzelman; dated September 28, 2001
6. Affidavit of Lieutenant John Jennings; dated October 29, 2001
7. Affidavit of Corrections Officer Briton L. Shelton; dated November 6, 2001
8. Adams County Prison Extraordinary Occurrence Report prepared by Warden Thomas Duran on August 27, 1999
9. Adams County Prison Extraordinary Occurrence Report prepared by Bruce A. Cluck on August 27, 1999
10. Adams County Prison Extraordinary Occurrence Report prepared by Sergeant Ray Heintzelman on August 27, 1999
11. Adams County Prison Extraordinary Occurrence Report prepared by Briton L. Shelton on August 27, 1999
12. Adams County Prison Extraordinary Occurrence Report prepared by Lieutenant John Jennings on August 27, 1999
13. The Gettysburg Hospital Emergency Department Report relative to Jason Benson's treatment on August 27, 1999 prepared by William J. Steinour, M.D.
14. Adams County Prison Inmate Handbook
15. Adams County Prison Policy and Procedure Manual Policy # 300-6 Use of Force
16. Oleoresin Capsicum Aerosol Training Manual copyright R.E.B. Training International, Inc.
17. Civil Action No. 1:00-CV-01229 Jason E. Benson vs. Thomas Duran, et al.
18. Plaintiff's Response to the Defendant's Request for Production of Documents

19. Videotape of the incident occurring August 27, 1999
20. Adams County Prison Recommendation and Report of Administrative Action
21. Adams County Prison Notice of Infraction prepared by Lieutenant Jennings dated August 27, 1999
22. Adams County Prison Notice of Administrative Segregation prepared by Lieutenant Jennings dated August 27, 1999
23. Adams County Prison Misconduct Hearing Committee Report number 1468 prepared by Deputy Warden Cluck dated August 30, 1999
24. Temporary Transfer Sheets relative to Jason Benson

Summary of the Incident

In August of 1999, Jason Benson was incarcerated in the State Correctional Institution in Smithfield. On the 25th of that month, he was transferred to Adams County Prison for a Post-Conviction Relief Act Hearing.

Just before departing for court on August 27, 1999, Mr. Benson was assessed a misconduct by Corrections Officer Briton Shelton. Upon Benson's return from court, the restraints applied by the transporting Adams County Sheriffs were removed. Corrections Officer Shelton then re-secured inmate Benson in leg irons and handcuffed him behind his back.

Corrections Officer Shelton states that when Benson was returned to the prison, he was informed of the misconduct violation and told that he was going to be placed in Administrative Segregation. Corrections Officer Shelton reported:

"I told Mr. Benson again why he was going. Mr. Benson then became verbally aggressive and loud. He started saying things such as "Ahh, fuck all of you mother fuckers." "This is fucking bullshit." He then looked at Lt. Jennings and said, "Man fuck you." He then turned his head and looked at me and stated, "Fuck you, too."

(Corrections Officer Shelton's report; dated August 27, 1999)
[Emphasis Added]

Mr. Benson was moved into the Intake Area medical room for his strip search. Here, according to the all the reports and affidavits, Benson, rather than complying with the long-standing and mandatory Adams County Prison search procedure, chose to be hostile and profane.

Anticipating a potential need to use force, Lieutenant Jennings followed established procedure and went to summon assistance. He returned with Deputy Wardens Cluck and Hankey who unsuccessfully attempted to reason with the prisoner. Warden Thomas Duran also responded. His efforts to obtain voluntary compliance from Benson were equally futile.

Once conflict resolution, verbal request, verbal command, and the show of force had proven ineffective in resolving the standoff, corrections personnel prepared to advance to the next step in the force policy. A video camera was brought to the room to record the incident.

Adams County Prison personnel aver inmate Benson was told his complaint regarding the assessed misconduct was irrelevant. Once more, he was asked if he would conform to institutional policy. Once more, the prisoner refused. When asked again, he remained silent. At this point, on the direction and authority of the prison warden, Lieutenant Jennings applied a short burst of oleo capsicum foam to the inmate's face. The corrections officers report that Benson was initially quiet. However, they state when he got up from his chair he became more aggressive, threatening and abusive. He spit at them, then violently

struck his head on the desk. They assert Benson's conduct compelled them to put him onto the floor and restrain him.

“... (Benson) began to slam his head on the desk and computer screen, to stop the inmate from hurting himself further. Inmate Benson was taken to the floor...”

(Jennings Report; August 27, 1999) [Emphasis Added]

According to corrections officers, the inmate stopped his violent behavior and was then placed into a running shower in order to flush the pepper foam from his face. Once the capsicum washed away, Benson again became unruly, hostile, loud, threatening, and vulgar. He escalated his aggressiveness by repeatedly spitting on corrections officers hitting both Officer Shelton and Lieutenant Jennings with his saliva. When the prisoner refused to stop, he was taken to the floor where he again spit at Lt. Jennings before being controlled. This time the officers placed a “spit shield” on the prisoner’s face. After this Benson became compliant and stopped his aggressive, defiant behavior.

Inmate Benson eventually complied with the Adams County Prison strip search procedures. Subsequently, he was transported to Gettysburg Hospital where he received treatment for superficial contusions.

Observations

1. On August 27, 1999, Thomas Duran, Bruce Cluck, Debra Hankey, Briton Shelton, John Jennings, and Ray Heintzelman were employed by the Corrections Department of Adams County. All were members of the staff at the Adams County Prison.
2. All were collectively and individually charged with the responsibility of securing the residents, maintaining order within the facility, and enforcing the policies of the Adams County Prison.
3. In Section 2006 of the Adams County Prison Inmate Handbook can be found:

"You may be frisked when moving from one area of the prison to another area, and are subject to a strip search at any time. Inmates leaving and returning to the prison will be strip searched."
[Emphasis Added]

4. In his deposition Jason Benson acknowledged that he was aware of this policy and felt it was reasonable.
5. **On the video, the Deputy Warden is heard discussing the misconduct with Inmate Benson.** In response, Benson looks away and shakes his head.
6. **On the video, corrections personnel can be heard asking Benson to comply with the strip search procedure and explaining the reason why.**
7. **On the video, Benson emphatically refuses the first request and ignores a second request.**
8. Adams County **Prison Policy 300-6, Use of Force, authorizes the use of force for inmate control and "to conduct a 'frisk' or strip search of any unruly inmate".**
9. Lieutenant Jennings was directed to administer oleo capsicum foam.
10. **The video shows that Jason Benson intentionally struck his head twice on the hard surface in front of him.**
11. In his complaint, Jason Benson alleges his head was hammered into the floor. The tape disproves this allegation.
12. In his complaint, Jason Benson charges that while on the floor he was kicked and kneed in his back and side. The tape disproves this.

13. In his Plaintiff's Response To The Defendant's Request For Production Of Documents, Jason Benson averred,

"I was... forced into a prone position on the ground, while the weight of the defendant's bodies in my back compressed my chest to the point of rendering my (me) unconscious from respiratory difficulty..."

(Page 3, Response to Question 7) [Emphasis Added]

The videotape disproves this.

14. In Civil Action No. 1:00-CV-01229, Jason Benson alleges he was thrown into a concrete shower stall where he fell unconscious. The videotape rebuts this.

15. On the videotape, Jason Benson is seen repeatedly spitting at corrections personnel

- Before striking his head,
- After being placed in the shower, and
- Upon his removal from the shower.

In response, corrections personnel ask him to stop, place him on the floor and employ a "spit shield".

16. In his deposition, Jason Benson alleged he was unaware of his misconduct. However, on the videotape, he is heard to complain about his "write up" and seen to spit on corrections personnel.

17. As a result of his actions on August 27, 1999, Jason Benson was charged with, pled Nolo Contendere to, and convicted of "Aggravated Harassment by a Prisoner".

18. The Gettysburg Hospital Emergency Department medical records reveal Jason Benson sustained only "superficial contusions".

Conclusions and Opinions

Based upon the facts and focal issues in the incident of August 27, 1999 and using the contemporary professional literature on police policies, procedures, and practices relevant to this incident and my own training and experience as a frame of reference, I have formed the following opinions. These opinions are accurate within all reasonable limits of professional certainty and reflect the current professional standards taught nationally. They are subject to change based upon the discovery of new information either before or during trial.

- I. The purpose of any written directive is to establish guidelines for agency personnel on how to perform a certain task. The directive must allow officers to do their jobs but within those limits established by the Constitution, the Supreme Court, case law, and the particular community's environmental needs and resources.

Administrators are taught that directives must be:

- **Constitutional:** The prescribed guidelines must not violate the United States or Pennsylvania Constitutions.
- **Current:** The prescribed guidelines must not violate clearly established case law. It must conform to generally accepted custom and practice and, where applicable, reflect technological changes.
- **Clear:** The prescribed guidelines must be easily understood and provide directions on how to perform the relevant tasks.

A. The guidelines established by the Adams County Prison relative to Use of Force:

- Define what should be considered force
- Define various levels of force
- Establish when force may be employed
- Dictate factors which an officer is to consider before the application of physical force
- Create a logical progressive confrontational force continuum
- Establish subsequent medical examination and reporting procedures and
- Mandate training for agency personnel

It is my opinion to an extremely high degree of professional certainty that Adams County Prison, from at least June 24, 1998 through the present day, has demonstrated a reasonable effort to develop, update, and maintain a Use of Force Policy. That policy is constitutionally sound, current in content, and easily understood by agency members.

II. The Adams County Prison Use of Force Policy also reflects current technological advancements such as oleo capsicum.

The application of chemical agents in the context of human conflict is as old as organized warfare. However, in the late 1980's the National Institute of Justice and the U.S. Attorney General's Conference on Less Than Lethal Weapons became concerned with injuries caused by the application of "traditional" tearing agents, such as the man-made CN and CS (mace) chemical compounds.

Pepper spray (OC) is the natural oil resin of capsicums (chili peppers) diluted with a carrier propellant such as isopropyl alcohol or water and placed in an aerosol or foam form.

"Oleoresin Capsicum is an organically based inflammatory agent derived from the essence of cayenne peppers. Its ingredients are generally 90 to 95 percent inert, making it safe for use at very close range."

(Federal Bureau of Investigations Law Enforcement Bulletin, May 1994, page 25)

"The Federal Bureau of Investigation Firearms Training Unit (FTU) conducted research to determine the most effective chemical agent product to be carried by the Special Agents. Based on that information provided by the U.S. Army Chemical Research and Development Center, FTU approved the use of Oleoresin Capsicum. FBI chemists who were consulted during the study did not foresee any long term health risks associated with the use of OC."

(National Institute of Justice, Technology Assessment Program, March 1994, page 5)

"OC caused almost immediate swelling and burning of the eyes and breathing passages. When the agent is inhaled, the respiratory tract is inflamed, and breathing is restricted. Effects do not support high levels of activity such as fighting with the police. ...studies indicate that the risk of injury or death is statistically improbable."

(International Association of Chiefs of Police, Executive Brief Pepper Spray and In Custody Deaths, March 1994, page 1)

"Pepper spray results in considerable tearing of the eyes, as well as temporary paralysis of the larynx which causes subjects to lose their breath. Contact with the face causes a strong burning sensation. After being exposed to the spray, subject's reactions become reflexive in nature. They immediately cover their eyes and bend over into a defensive posture to avoid further contact. This reactive behavior allows officers to gain control and restrain disorderly subjects more

effectively. The effects of the spray generally last about 20 to 45 minutes and leave no residual effects."

(Federal Bureau of Investigations Law Enforcement Bulletin, May 1994) [Emphasis Added]

It is my professional opinion **Oleoresin Capsicum** is a non-hazardous inflammatory agent, which gives officers a degree of flexibility at two critical points in the force continuum. It is an intermediate step, which **may be employed before they make physical contact** with subjects **or after initial physical contact** but before the introduction of hard open hand techniques or hand-held weapons such as the baton.

It is also my professional opinion the guidelines established for its use by correctional officers and the introductions of OC spray into a correctional facility are reasonable and prudent decisions by Adams County Prison administrators. These decisions reflect a desire by prison administrators to reduce the threat of assault or injuries to corrections officers and inmates alike.

III. It is my opinion to an extremely high degree of professional certainty that an objective review of the videotape and written record established in this case clearly shows what occurred on August 27, 1999.

1. Upon his returning from court, Jason Benson was told he had been issued a "Misconduct" and that he was being placed in "Administrative Segregation".
2. The videotape reveals Jason Benson decided to become uncooperative and commit a serious breech of prison policy and discipline.
3. Jason Benson refused the requests of Lieutenant Jennings and Officer Shelton to submit to a strip search.
4. Lieutenant Jennings summoned Deputy Wardens Cluck and Hankey.
5. Jason Benson repeatedly defied both the prison's policy and the Adams County Prison officials who were charged with the responsibility to maintain order and discipline within the facility.
6. Deputy Warden Cluck and Jason Benson discussed Inmate Benson's issued misconduct.
7. Despite repeated attempts by prison officials to peacefully resolve the incident through verbal communication and a show of force, the inmate persisted in controlling the standoff.

8. Warden Thomas Duran entered the room with additional corrections personnel and a **video camera**.
9. Benson refused two videotaped requests to adhere to the long-standing Adams County Prison policy. His **compliance at any time would have prevented the need for an escalation of force**
10. Rather than engage in a physical confrontation with an unsecured prisoner in a small room containing office furniture and equipment, **corrections administrators authorized a brief application of oleo capsicum foam to Mr. Benson's face**.
11. For reasons known only to Inmate **Benson**, he twice **intentionally banged his head onto a computer monitor**, which caused a "superficial contusion on the front temporal scalp". He also became **more hostile, abusive, and vulgar**.
12. In order to prevent **Benson** from seriously injuring himself, he **was placed on the floor** and held there by corrections officers.
13. Once Jason **Benson calmed down**, he **was carried to the shower** since he claimed he was unable to move his legs. (It must be noted that Benson is seen moving his legs later on the videotape.)
14. Jason **Benson was lowered into the shower stall and placed under the water stream**. (Flushing with large quantities of fresh water is the preferred de-escalation technique after oleo capsicum application.)
15. Inmate **Benson** ignored attempts to calm him down but rather **remained threatening, abusive, vulgar, and profane**.
16. Inmate **Benson deliberately spit his saliva on corrections personnel and refused several requests to stop his aggressive behavior**.
17. Inmate **Benson stated he refused to comply with the strip search policy because of the "write up" and, once again, assaults corrections personnel by deliberately spitting on them**.
18. Inmate **Benson was removed from the shower, carried into the outer office, and placed on the floor**.
19. Jason **Benson again intentionally spit on a corrections officer**.
20. **Benson was restrained and held down until a "spit shield" could be obtained and put in place**.
21. Jason **Benson finally decided to stop assaulting prison officials and agreed to follow institutional regulations**.

22. Jason Benson was taken to Gettysburg Hospital where he was treated for a superficial contusion of the scalp and "a few superficial handcuff-type contusions of the skin".

IV. It is my opinion to an extremely high degree of professional certainty that those corrections officers present on August 27, 1999 had specific and articulable facts that would lead a reasonable, prudent, and properly trained officer to believe:

- Mr. Benson was angry and non-compliant,
- That force was necessary to enforce the rules and regulations of the prison, and
- That hands-on force would result in a physical confrontation placing corrections personnel and Jason Benson at risk of serious injury.

A. It is my opinion to an extremely high degree of professional certainty the actions of the Adams County Prison Staff in their efforts to obtain Mr. Benson's voluntary compliance with prison rules on August 27, 1999 were tolerant, reasonable, proper, and exhausted all less-intrusive means of obtaining control of the situation.

B. It is also my opinion to an extremely high degree of professional certainty the decision to employ oleo capsicum was an appropriate response to Inmate Benson's defiant behavior on August 27, 1999. It was the least intrusive control option left to them by Inmate Benson.

C. It is further my opinion to an extremely high degree of professional certainty the use of the "swarm and take down" technique employed by corrections officers on August 27, 1999 was reasonable, proper, and necessary to both prevent Inmate Benson from intentionally injuring himself and to prevent the prisoner's repeated assaults on corrections personnel.

D. Furthermore, it is my opinion to an extremely high degree of professional certainty there is not an iota of evidence to indicate the force options selected rose to an Eighth Amendment standard "*cruel and unusual punishment so outrageous as to shock the conscience.*"

E. Lastly, it is my opinion to an extremely high degree of professional certainty the conduct of the involved Adams County Prison personnel on August 27, 1999 was proper. It was well within the legal and ethical standards established by the courts, taught by the profession, and mandated by the United States and Pennsylvania Constitutions. Their conduct was not malicious, unnecessary, unwarranted, or excessive. Any reasonably trained officer confronted with like circumstances would respond in a like manner and no reasonably trained corrections officer would believe that response was unlawful.

RONALD H. TRAENKLE

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215-639-0741 (home)
727-943-2377 (Florida)

EDUCATION:

1990 *Northwestern University Traffic Institute* - Graduate level work
1967 *State University of New York* - Degree in Metallurgy

Northwestern University: School of Police Staff and Command
Pennsylvania State University: Police Executive Development, Polex Legal Forum
Indiana University of Pennsylvania: Municipal Police Driver Training Programs
University of Delaware: Internal Affairs

Numerous other police management courses, liability training programs, and specialized schools including canine handler and hostage negotiations taught by the Federal Bureau of Investigations, Pennsylvania State Police, Americans for Effective Law Enforcement, The National Sheriff's Association and the Municipal Police Officers Education and Training Commission.

PROFESSIONAL EXPERIENCE:

TEMPLE UNIVERSITY POLICE ACADEMY

Director/Commanding Officer 1998 - present

This position is responsible for administering all phases of basic recruit police training for Temple University in accordance with the regulations set forth by the Municipal Police Officers Education and Training Commission and the Commonwealth of Pennsylvania in Act 120. Duties include the development and implementation of all program policies, rules and regulations related to all academy activities.

curriculum vitae of Ronald H. Traenkle

BENSALEM TOWNSHIP POLICE DEPARTMENT

Captain - Commander Professional Services Division 1987 - 1998

Highest sworn rank in the department (population 70,000)

The Professional Services Division is responsible for grant preparation, internal affairs, training, criminalistics, Crime Prevention, budget, purchasing, accreditation and risk management. It is also the liaison to the executive and legal branches of Township government. The municipality utilizes line object budgetary procedures with some program budgeting.

curriculum vitae of Ronald H. Traenkle

Captain - Commander Patrol Division 1981 - 1987

The Patrol Division provides police patrol, animal control and crossing guard services to the community. The division consisted of three lieutenants, five sergeants and fifty uniform officers assigned to squads, accident investigation and canine functions. It also included over forty civilians in animal control and auxiliary services.

Lieutenant - Watch Commander 1978 - 1981

Commanded two or more police shifts consisting of sergeants, patrol officers and detectives. Responsible to investigate complaints and disciplinary problems, evaluate performance of squad supervisors as well as individual officers; in overall command of the Police Department in the absence of higher authority.

Sergeant - Squad Supervisor 1977 - 1978

Responsible for supervision, motivation, discipline, and performance of a team of ten police officers who provided patrol services to the community.

Patrolman - Canine Unit 1972 - 1977

Responsible for all phases of police work: radio calls, traffic enforcement, accident investigation, as well as canine handler obligations.

SUMMARY OF QUALIFICATIONS:

Over twenty-five years of comprehensive law enforcement experience ranging from patrol/K-9 officer to divisional commander. Successful management record of improving employee productivity, morale and organizational professionalism, development of statewide accepted training and nationally recognized "Risk Management" programs, development of policies and procedures, coordination of the Accreditation Program, formulation of the initial Bensalem "Town Watch" program.

PROFESSIONAL BACKGROUND:

Experience as an adjunct college instructor and lecturer for: Villanova (Graduate and Undergraduate), North Carolina State University, Temple University, Pennsylvania State University, Bucks County Community College, City of Pittsburgh Police Academy, Philadelphia Police Department Advanced Training Unit, Allegheny County Police Academy, North Carolina POST Academy, Bucks County Police Academy, Washington DC Police Academy, Pennsylvania State Police Academy and the Pennsylvania League of Cities.

Conducted seminars at the 1988, 1989, and 1992 Pennsylvania Chiefs of Police Conference. Conducted training seminars for officers from over fifteen hundred different federal, state and local law enforcement agencies serving in thirty- two states, two foreign countries and the Tohono O'dom Nation Tribal Police. Topics include: Negligent Supervision, Discipline, Driver Training, Police Policy Development, Use of Force, Canine, Police Pursuit, Police Procedures, Domestic Violence and Training.

curriculum vitae of Ronald H. Traenkle

Faculty member of the Pennsylvania State University Police Executive Development and Advanced Police Executive Development and High Impact Supervision training programs and The Commonwealth of Kentucky Justice Cabinet on "Police Management and Civil Liability."

Assisted in the drafting of Senate Bills (PA) numbers 93-313 and 93-314 regarding Police Pursuit Policy and Training in the Commonwealth of Pennsylvania. Signed into law by Governor Robert Casey in January 1995.

Member of the Municipal Police Officers Education and Training Commission Course Development Committee for the 1998 mandatory in-service training program related to "Emergency Vehicle Operations" and the 2000 Development Committee on "Case Preparation and Testifying in Court". Lectured on behalf of the Commonwealth of Pennsylvania at the 1999 National Highway Traffic Safety Association "Train the Trainers" Program on "Pursuit Management and Liability". Co-authored and delivered curriculum "Critical Policy Development" for the Pennsylvania Commission on Crime and Delinquency, training presented to Sheriff's Departments throughout the Commonwealth of Pennsylvania 2000-2001. Assisted in writing and delivery of curriculum "The Ethical and Accountable Leader" presented to all management level employees of the Pennsylvania Department of Corrections, 2000-2001. Assisted in the development of the new Act 120 curriculum, "Use of Force in Law Enforcement" mandated by the Commonwealth of Pennsylvania to be taught all entry- level law enforcement officers, delivered course to Commonwealth certified instructors at the Pennsylvania State Police Academy in 2001.

Commonwealth of Pennsylvania Certified Instructor for the MPOETC in both the Act 120 and Act 180 training programs. Certified Instructor for the American Society of Law Enforcement Trainers.

Fifteen years of experience as a law enforcement/security consultant working more than 350 Federal Civil Rights and State Tort cases. Accepted as an expert witness in both the Federal and State Courts.

MEMBERSHIPS:

Vidocq Society

Fraternal Order of Police

International Association Chiefs of Police

The American Society of Law Enforcement Trainers

Pennsylvania Chiefs of Police Association (two term member Traffic Committee)

9-27-00

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JASON E. BENSON, Plaintiff v. THOMAS DURAN, et al., Defendants	: CIVIL ACTION NO. 1:CV-00-1229 : : (JUDGE CALDWELL) : : (MAGISTRATE JUDGE BLEWITT)
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**PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Fed.R.Civ.P., Rule 34, the plaintiff Jason Benson, requests that the defendants produce the documents listed herein within (30) days, either by providing copies or by making them available for inspection and copying.

- 1) All grievances, complaints, or other document pertaining to the mistreatment or use of force on any inmates that were in the Adams County Prison from 8/98 until 8/99, that were filed against defendants Duran, Cluck, Hankey, Jennings, Shelton, Heintzelman, Orth, or Vazquez; as well as all investigative reports and actions taking as a result of any of the documents stated above.
- 2) All policies, directives, or instructions to staff concerning the application of use of force.
- 3) All policies, directives, or instructions to staff concerning the use of tear gas, C.C. Pepper Foam, or other chemical agents used by Adams County Prison staff.
- 4) All policies or memoranda that describes the application of chemical agents as in request #3, the effects of the chemical agents, and especially policies, directives, and memoranda concerning individuals the said chemical agents should not be applied on.
- 5) The plaintiff's medical records from Gettysburg Hospital, from 1/90 until 9/99.
- 6) Any and all policies, directives, or instructions that are given to the Adams County Prison staff about inmates in their custody for court, whom are state prisoners by SCI-Smithfield, and/or Wexford Health Systems concerning the treatment of "Epileptic" patients.
- 7) All complete Adams County Prison "Extraordinary Occurrence Reports prepared by everyone involved in the incident on 8/27/99.
- 8) A copy of the "Use of Force Log" and All statements from witnesses involved from 8/98 until 8/31/99.



CERTIFICATE OF SERVICE

I, Jasson Eric Benson, plaintiff, do hereby certify that on the date set forth below, I did serve a true and correct copy of the foregoing document upon the defendant's attorney(s) at the following address indicated below by sending same in the United States mail, first class, postage prepaid:

David Schwalm, Esq.
305 North Front St.
P.O. Box 499
Harrisburg, PA 17108

Date: 9/25/00


Mr. Jason E. Benson, Plaintiff
DS-6483, SCI-Smithfield
P.O. Box 999, 1120 Pike Street
Huntingdon, PA 16652

David L. Schwalm, Esquire
Thomas, Thomas & Hafer, LLP
Attorney I.D. # 32574
305 North Front Street
P. O. Box 999
Harrisburg, PA 17108-0999
(717) 255-7643
Attorneys for Defendants Thomas Duran; Bruce Cluck; Debra Hankey; John Jennings; William Orth; Rae Hientzelman; David Vazquez; and Briton Shelton

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON ERIC BENSON,
Plaintiff

CIVIL ACTION

v.

NO. 1:00-CV-01229

THOMAS DURAN; BRUCE CLUCK;
DEBRA HANKEY; JOHN JENNINGS;
WILLIAM ORTH; RAE HIENTZELMAN;
RONALD LONG and WILLIAM ELLIEN;
BRITON SHELTON; DAVID VAZQUEZ;
WILLIAM J. STEINOUR;
Defendants

RESPONSE OF ADAMS COUNTY DEFENDANTS TO
PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

AND NOW, Defendants, Thomas Duran, Bruce Cluck, Debra Hankey, John Jennings, William Orth, Rae Hientzelman, David Vazquez and Briton Shelton, by their attorneys, Thomas, Thomas & Hafer, LLP, file this Response and Objections to the Plaintiff's First Request for Production of Documents as follows:

1. The Adams County Defendants object to Request No. 1 in that the said Request is overly broad, relates to confidential information and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence.



2. See copies of Adams County Prison Inmate Handbook, Adams County Prison Use of Force Policy and Procedure, and the training manuals used by Adams County Prison staff in the use of oleoresin capsicum attached hereto.
3. See documents attached in response to Request No. 2.
4. See documents attached in response to Request No. 2.
5. See copies of Plaintiff's medical records maintained at the Adams County Prison for the period of incarceration in 1999. The Adams County Defendants do not have Plaintiff's medical records from Gettysburg Hospital from January of 1990 to the present.
6. See documents attached hereto.
7. See Extraordinary Occurrence Reports attached hereto.
8. Defendants object to Request No. 8 in that the said Request is overly broad, relates to confidential information and seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

THOMAS, THOMAS & HAVER, LLP



David L. Schwalm, Esquire
Attorney I.D. # 32574
305 North Front Street
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Harrisburg, PA 17108-0999
(717) 255-7643

Date: 3/26/01

Attorneys for Adams County Defendants

CERTIFICATE OF SERVICE

I, David L. Schwalm, Attorney for Thomas, Thomas & Hafer, LLP, hereby certify that a copy of the foregoing document was served upon the following, by enclosing a true and correct copy in an envelope addressed as follows, postage prepaid:

Jason E. Benson
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Huntingdon, PA 16652

Jason Kantner
Post & Schell, PC
240 Grandview Avenue
Camp Hill, PA 12011

James D. Young
Lavery, Faherty, Young & Patterson, P.C.
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Harrisburg, PA 17108-1245

THOMAS, THOMAS & HAVER, LLP



David L. Schwalm, Esquire
Attorney I.D. # 32574
305 North Front Street
P. O. Box 999
Harrisburg, PA 17108-0999
(717) 255-7643

Date: 3/29/01

Attorneys for Adams County Defendants

:111593.1

ADAMS COUNTY PRISON
EXTRAORDINARY OCCURRENCE REPORT

NAME BENSON, JASON ACP# 990740 DATE 8/27/99
 HOUSING AREA E-2 LOCATION OF INCIDENT APP. MEDICAL ROOM
TIME: 11:10

Brief Summary of Incident:

(Include Staff and Inmate Names and Number) FORCE USED ON INMATE BENSON
JASON (990740). WARDEN DURAN, DEPUTY WARDEN'S CLUE
AND HANKEY, LT. JENNINGS, SGT. HEINTZELMAN,
OFFICER SHELTON.

Action and Comments: TAKEN TO E.R. @ 130 FOR MEDICAL ATTENTION
AS A RESULT OF O.C. AND INMATE'S REQUEST.
PSP NOTIFIED TO FILE CRIMINAL CHARGES
FOR AGGRAVATED ASSAULT BY PRISONER.
ENTIRE EVENT WAS VIDEO-TAPED.

Shift Commander

Signature and I.D. No.: JK 647Date and Time 8-27-99 1500Print Name L. Jenkins

Report of Incident: ON THE ABOVE DATE & APP. TIME, LT. JENNINGS
INFORMED ME THAT INMATE BENSON, UPON HIS RETURN
FROM COURT WAS REFUSING TO BE STRIP-SEARCHED.
I REPORTED TO THE LT'S. OFFICE AND MET LT.
JENNINGS WHO BRIEFED ME ON WHAT HAD TRANSPARE
THIS FAR. A PLAN WAS DEVISED AND WE REPORTED
TO THE MEDICAL ROOM, WHERE DEPUTY WARDEN

(over for continuation)

Staff Signature
a. No: D

Date and Time

8/27/993:10 P.M.Print Name DURAN

ADAMS COUNTY PRISON
EXTRAORDINARY OCCURRENCE REPORT

NAME Benson, Jason ACP# 99-00740 DATE 8/27/99
 HOUSING AREA A-Block LOCATION OF INCIDENT Medical Office
 TIME: 1145 hrs

Brief Summary of Incident:
 (Include Staff and Inmate Names and Number) Use of force.

Action and Comments: Inmate showered, transferred to E-Block and transported to ER and examined by the on-duty physician.

PSP notified to press charges.

Incident was video documented

Shift Commander

Signature and I.D. No.: B.A.Cluck

Date and Time 8/27/99 1500 hrs

Print Name B.A.Cluck

Report of Incident: On the above time and date, I was informed by Lt. Jennings that the aforementioned inmate was refusing to submit to a strip-search upon returning from court. I attempted to speak w/ Inmate Benson about his actions but he only began yelling profanities and making comments like, "Fuck this! This is fucking Bullshit! I'm not stripping!" He was again asked to cooperate and submit to a search and he again refused. At that point, Lt Jennings sprayed a one second burst of OC Spray (Fog) into Benson face. Benson then began calling staff present, "fucking animals," "cuck suckers" (over for continu

St. Signature
 a. I.D. No.: B.A.Cluck

Date and Time 8/27/99 1500 hrs

Print Name B.A.Cluck

ADAMS COUNTY PRISON
EXTRAORDINARY OCCURRENCE REPORT

NAME Benson, Jason ACP# 99-00740 DATE 8/27/99
 HOUSING AREA A-Block LOCATION OF INCIDENT Intake
 TIME: 1120

Brief Summary of Incident:

(Include Staff and Inmate Names and Number) On above time & date I, Sgt Huytel was asked to help with Inmate Benson, Jason at intake. Inmate Benson, Jason did not want to strip after count.

Action and Comments: Taken to Barracks 6A 110 for evaluation.
 As a result of the A.C. and the inmates refusal
 A.S.P. ordered to take command center
 for enhanced assist by a Precor
 that was used that

Shift Commander

Signature and I.D. No.: J.H.

603

Date and Time

8-27-99 1600

Print Name

H. Huytel

Report of Incident: On above time & date I, Sgt Huytel was asked to help with Inmate Benson, Jason in the Intake area. Inmate Benson was having a problem that he didn't want to be stripped after coming back from count. He was asked to strip but he refused to do so. At that time he was sprayed & then he stated to hit his head on the computer screen. After this he wouldn't stop so he was taken to the floor until he had enough & then he was placed in the shower.

(over for continuation)

Signature

a. I.D. No:

Sgt Huytel 61-4Date and Time 8/27/99 1300

Print Name

H. Huytel

CERTIFICATE OF SERVICE

I, Kevin C. McNamara, Attorney for Thomas, Thomas & Hafer, LLP, hereby certify that a copy of the foregoing document was served upon the following, by enclosing a true and correct copy in an envelope addressed as follows, postage prepaid:

Jason E. Benson
Inmate # DS-6483
SCI Smithfield
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THOMAS, THOMAS & HAFER, LLP

By: Kevin C. McNamara
Kevin C. McNamara

:149908.1

11/27/01